

2012 FEB -1 PM 4:23

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

RECEIVED

In re:) Docket No. 12-0 0223
)
NICK SCULAC, an individual; and BIG)
CATS OF SERENITY SPRINGS, INC., a)
Colorado corporation, doing business as)
SERENITY SPRINGS WILDLIFE)
CENTER,)
)
Respondents.) COMPLAINT

There is reason to believe that the respondents named herein have willfully violated the Animal Welfare Act, as amended (7 U.S.C. § 2131 et seq.)(the "Act"), and the regulations and standards issued thereunder (9 C.F.R. § 1.1 et seq.)(the "Regulations" and "Standards"). Therefore, the Administrator of the Animal and Plant Health Inspection Service ("APHIS") issues this complaint alleging the following:

JURISDICTIONAL ALLEGATIONS

1. Respondent Nick Sculac is an individual whose mailing address is 24615 Scott Road, Calhan, Colorado 80808. At all times mentioned herein, said respondent was an exhibitor and a dealer, as those terms are defined in the Act and the Regulations, and held Animal Welfare Act license number 84-C-0069.
2. Respondent Big Cats of Serenity Springs, Inc., dba Serenity Springs Wildlife Center, is a Colorado corporation whose agent for service of process is Nick Sculac, 1670 Paonia, Colorado Springs, Colorado 80915. At all times mentioned herein, said respondent was a dealer and an exhibitor, as those terms are defined in the Act and the Regulations, and did not hold an Animal Welfare Act license.
3. Respondents operate a "zoo" (as that term is defined in the Regulations), and exhibit

approximately 120 wild and exotic animals at a facility in Calhan, Colorado. The gravity of the violations herein is great, and include the repeated noncompliance with the regulations and failure to meet the minimum standards for veterinary care, housing, and husbandry. Between May 2007 and January 2010, no fewer than 31 animals in respondents' custody died. Respondent Sculac failed to adhere to the recommendations of respondents' attending veterinarian not to house species susceptible to feline and canine distemper in enclosures at the perimeter of the facility because of the risk of contracting diseases from local wildlife. Multiple young animals died after contracting feline distemper or canine distemper (Seta, Sarabi, Divot, Titus, Erica, Scar, Bree, Mace). Numerous other animals (Noodle, Lily, Jinx, Abu, Delilah, Mystik, Maya, Diesel, Doodle, Stinky, Leah, Ramses) died for reasons unknown to the attending veterinarian and/or not documented by respondents. Respondent Sculac has not shown good faith. In approximately April 2009, following injuries to an individual (Michael McCain) by a tiger at respondents' facility, respondent Sculac extorted money from Mr. McCain by falsely representing to Mr. McCain that the U.S. Department of Agriculture had fined him \$40,500 because of the tiger bite incident (which it had not), and that he would have to close the facility; whereupon Mr. McCain wired \$40,500 to respondent Sculac.

ALLEGED VIOLATIONS

4. Between 2007 and 2010, respondents failed to employ an attending veterinarian under formal arrangements, as required, in willful violation of the Regulations (9 C.F.R. § 2.40(a)(1)), and specifically, respondents' arrangement with their attending veterinarian did not include regularly-scheduled visits to the premises.

5. On March 9, 2007, at Calhan, Colorado, respondents failed to provide APHIS officials with access to respondents' facilities as required, in willful violation of the Act and the

Regulations. 7 U.S.C. § 2146(a); 9 C.F.R. § 2.126.

6. On or about April 6, 2007, at Calhan, Colorado, respondents willfully violated the Regulations (9 C.F.R. § 2.100(a)), by failing to meet the minimum Standards, as follows:

- a. An enclosure housing three tigers (Harley, Aphrodite and Shenandoah) was in disrepair, with protruding wire and broken cyclone fencing. 9 C.F.R. § 3.125(a).
- b. An enclosure housing large felids (Reno and Zazu) had inadequate drainage, resulting in excess standing water. 9 C.F.R. § 3.127(c).

7. Between May 2007 and April 2009, respondents failed to have an attending veterinarian provide adequate veterinary care to their animals, and failed to establish and maintain programs of adequate veterinary care that included the use of appropriate methods to prevent disease, in willful violation of the Regulations, 9 C.F.R. §§ 2.40 (a), (b)(2), and specifically, respondents failed to vaccinate animals against distemper, or to take steps to eliminate or reduce their risk of contracting the disease, and consequently, two young tigers (one of whom was named Seta), two twelve-week-old lions (Sarabi and Divot), an eleven-month old lion (Titus), two one-year old lions (Erica and Scar), a seven-month old tiger (Bree), a four-month-old tiger (Mace), and a 10-week old black bear all contracted distemper and died.

8. On or about June 25, 2007, at Calhan, Colorado, respondents willfully violated the Regulations as follows:

- a. Respondents failed to promptly notify APHIS of an additional site where animals in respondents' custody were being held. 9 C.F.R. § 2.8.
- b. Respondents failed to establish and maintain programs of adequate veterinary care that included the use of appropriate methods to prevent, control, and treat disease and injury, and specifically, respondents failed to dispose of expired pharmaceutical drugs for use on animals. 9 C.F.R. § 2.40(b)(2).

- c. Respondents failed to make, keep and maintain records of the acquisition and disposition of animals, specifically Tut, Pandora, Nefertiti, Priya, Asta, Lavesta and Noodle. 9 C.F.R. § 2.75(b)(1).

9. On or about June 25, 2007, at Calhan, Colorado, respondents willfully violated the Regulations (9 C.F.R. § 2.100(a)), by failing to meet the minimum Standards, as follows:

- a. Eighteen enclosures housing a total of twenty-nine animals were in various states of disrepair, with, *inter alia*, protruding nails, splintering, broken or rotted wood, excessive rust, and broken cyclone fencing. 9 C.F.R. § 3.125(a).
- b. Respondents failed to store supplies of food so that they would be protected from deterioration, molding or contamination. 9 C.F.R. § 3.125(c).
- c. Respondents failed to provide adequate shelter from sunlight to a total of twenty-four animals housed in eleven enclosures. 9 C.F.R. § 3.127(a).
- d. Respondents failed to keep water receptacles for twenty-one animals housed in eleven enclosures clean and sanitary. 9 C.F.R. § 3.130.
- e. There was an accumulation of fecal matter in two enclosures housing three animals. 9 C.F.R. § 3.131(a).
- f. Respondents failed to establish and maintain an effective pest control program. 9 C.F.R. § 3.131(d).

10. On or about August 29, 2007, at Pueblo, Colorado, respondents failed to handle animals during public exhibition so there was minimal risk of harm to the animals and to the public, with sufficient distance and/or barriers between the animals and the general viewing public so as to assure the safety of animals and the public, and respondents failed to handle the lions as carefully as possible in a manner that does not cause physical harm, stress, trauma, or unnecessary discomfort, and specifically, two lions were exhibited to the public without any distance or barriers, in willful violation of the Regulations. 9 C.F.R. §§ 2.131(b)(1), 2.131(c)(1).

11. On or about September 17, 2007, at Calhan, Colorado, respondents failed to have an

attending veterinarian provide adequate veterinary care to their animals, and failed to establish and maintain programs of adequate veterinary care that included a method of frequent communication with the attending veterinarian, and specifically, respondents failed to obtain veterinary care for two tigers (Eragon and Sitara), both of whom had visible abnormalities (Sitara had several puncture wounds on one leg, and an open wound on the another leg; and Eragon had noticeable swelling and was limping on the front left leg), and respondents had not documented that they had observed these conditions, nor had they communicated with their attending veterinarian, in willful violation of the Regulations. 9 C.F.R. §§ 2.40 (a), (b)(3).

12. On or about September 17, 2007, at Calhan, Colorado, respondents willfully violated the Regulations (9 C.F.R. § 2.100(a)), by failing to meet the minimum Standards, as follows:

- a. Eleven enclosures housing a total of twenty-one animals were in various states of disrepair, with, *inter alia*, broken wires, protruding nails, splintering, broken or rotted wood, and broken cyclone fencing. 9 C.F.R. § 3.125(a).
- b. Respondents failed to store supplies of food so that they would be protected from deterioration, molding or contamination. 9 C.F.R. § 3.125(c).
- c. Two enclosures housing five animals had inadequate drainage, causing there to be excess standing water inside the enclosures. 9 C.F.R. § 3.127(c).
- d. Respondents failed to enclose facilities for animals by an adequate perimeter fence. 9 C.F.R. § 3.127(d).
- e. Respondents failed to keep water receptacles for animals clean and sanitary. 9 C.F.R. § 3.130.
- f. There was an overgrowth of weeds in enclosures housing two animals. 9 C.F.R. § 3.131(a).

13. On or about January 2, 2008, at Calhan, Colorado, respondents failed to have an attending veterinarian provide adequate veterinary care to their animals, and failed to establish and

maintain programs of adequate veterinary care that included a method of frequent communication with the attending veterinarian, and specifically, respondents failed to obtain veterinary care for two leopards (Thunder and Rosebud), both of whom had visible abnormalities (Thunder had open wounds on the tail; and Rosebud was hunched over in an abnormal posture, and had an open wound on the tail, and a poor hair coat), and respondents had not documented that they had observed these conditions, nor had they communicated with their attending veterinarian, in willful violation of the Regulations. 9 C.F.R. §§ 2.40 (a), (b)(3).

14. On or about January 2, 2008, at Calhan, Colorado, respondents willfully violated the Regulations (9 C.F.R. § 2.100(a)), by failing to meet the minimum Standards, as follows:

- a. Cyclone fencing of enclosure housing Sitara, Spangle and Stripes had a hole approximately 2" wide, compromising the fence's structural integrity. 9 C.F.R. § 3.125(a).
- b. The elevated resting platform in the enclosure housing Sinbad had a protruding nail, and worn and/or chewed legs. 9 C.F.R. § 3.125(a).
- c. The elevated resting platform in the enclosure housing Rocket had protruding nails. 9 C.F.R. § 3.125(a).

15. On or about August 24, 2008, at Calhan, Colorado, respondents willfully violated the Regulations as follows:

- a. Respondents failed to handle tigers as carefully as possible in a manner that does not cause physical harm, or unnecessary discomfort. 9 C.F.R. § 2.131(b)(1).
- b. Respondents failed to have an attending veterinarian provide adequate veterinary care to their animals, and failed to establish and maintain programs of adequate veterinary care that included a method of frequent communication with the attending veterinarian, and specifically, respondents failed to obtain veterinary care for a tiger (Nala) whom respondent Sculac diagnosed as having cancer. Said respondent gave Nala three doses of a sedative, unsuccessfully attempted to inject Nala with euthanasia solution, and ultimately killed Nala by cutting her throat, and reported to Colorado officials that Nala had died of natural causes. 9 C.F.R. §§ 2.40 (a), (b)(3).

16. On or about September 25 through October 11, 2008, at Calhan, Colorado, respondents willfully violated the Regulations (9 C.F.R. § 2.100(a), by failing to meet the minimum Standards for separation of incompatible animals (tigers) housed in adjacent enclosure divided by a single fence. 9 C.F.R. § 3.133.

17. On or about October 30, 2008, at Colorado Springs, Colorado, respondents failed to handle animals during public exhibition so there was minimal risk of harm to the animals and to the public, with sufficient distance and/or barriers between the animals and the general viewing public so as to assure the safety of animals and the public, and specifically exhibited tigers at a party with insufficient distance and/or barriers between the animals and the public, whereupon one of the tigers scratched a person walking by its enclosure, and exhibited caracals without any barriers or distance, so that the caracals walked among the party guests, in willful violation of the Regulations. 9 C.F.R. § 2.131(c)(1).

18. On or about November 7, 2008, in Denver, Colorado, respondents failed to handle animals as carefully as possible in a manner that does not cause behavioral stress, physical harm, or unnecessary discomfort, exposed young animals to excessive public handling, exhibited young animals for periods of time that would be detrimental to them, and exhibited them under conditions that were inconsistent with their good health and well-being, in willful violation of the Regulations (9 C.F.R. §§ 2.131(b)(1), 2.131(c)(3), 2.131(d)(1)).

19. In or about November 2008 and March 2009, respondent Sculac operated at additional sites in Colorado Springs, Colorado, without having notified complainant of such change in said respondent's address, in willful violation of section 2.8 of the Regulations (9 C.F.R. § 2.8).

20. On or about March 10, 2009, at Calhan, Colorado, respondents failed to handle infant

bears as carefully as possible in a manner that does not cause behavioral stress, physical harm, or unnecessary discomfort and, specifically, fed the bears with a bottle in such a manner that both developed aspiration pneumonia, from inhaling milk into their lungs, which caused the death of one of the bears (the other bear died from distemper on April 8, 2009), in willful violation of the Regulations (9 C.F.R. § 2.131(b)(1)).

21. On April 24, 2009, at Calhan, Colorado, respondents failed to handle tigers as carefully as possible in a manner that does not cause behavioral stress, physical harm, or unnecessary discomfort, in willful violation of the Regulations (9 C.F.R. § 2.131(b)(1)).

22. On or about April 24, 2009, at Calhan, Colorado, respondents failed to establish and maintain programs of adequate veterinary care that included the use of appropriate methods to prevent injuries, and adequate guidance to personnel involved in the care and use of animals regarding handling, and specifically, respondents permitted volunteer personnel to approach or enter tiger enclosures or tiger areas, whereupon a tiger attacked a volunteer, causing injuries, and resulting in the tiger's being beaten on the head with a shovel, in willful violation of the Regulations (9 C.F.R. § 2.40(b)(2)).

23. On or about July 19, 2009, at Calhan, Colorado, respondents willfully violated the Regulations as follows:

a. Respondents failed to handle tigers as carefully as possible in a manner that does not cause physical harm, or unnecessary discomfort. 9 C.F.R. § 2.131(b)(1).

b. Respondents failed to have an attending veterinarian provide adequate veterinary care to their animals, and failed to establish and maintain programs of adequate veterinary care that included a method of frequent communication with the attending veterinarian, and specifically, respondents failed to obtain veterinary care for a tiger (Sundar) and a cougar (Risky) with obvious medical problems, and failed to notify the attending veterinarian of these conditions, and instead undertook to have a volunteer (Jason) who was

a veterinary technician, euthanize the two animals himself. 9 C.F.R. §§ 2.40 (a), (b)(3).

24. On or about January 19, 2010, at Calhan, Colorado, in willful violation of the Regulations, respondents failed to handle animals as carefully and expeditiously as possible in a manner that did not cause trauma, behavioral stress, physical harm or unnecessary discomfort, failed to have an attending veterinarian provide adequate veterinary care to their animals, and failed to establish and maintain programs of adequate veterinary care that included a method of frequent communication with the attending veterinarian, and specifically, respondents failed to obtain veterinary care for a female lynx (Phoebe) suffering from a prolapsed uterus. The respondents did not seek veterinary care for Phoebe for one week. Surgery revealed several inches of impacted feces including wood shavings. Phoebe died in respondents' custody following surgery. The attending veterinarian reported that the suspected cause of death was septicemia due to the length of time of impaction. 9 C.F.R. §§ 2.40 (a), (b)(3), 2.131(b)(1).

25. On or about January or February 2010, at Calhan, Colorado, in willful violation of the Regulations, respondents failed to handle animals as carefully and expeditiously as possible in a manner that did not cause trauma, behavioral stress, physical harm or unnecessary discomfort, failed to have an attending veterinarian provide adequate veterinary care to their animals, and failed to establish and maintain programs of adequate veterinary care that included a method of frequent communication with the attending veterinarian, and specifically, respondents initially failed to obtain veterinary care for a female leopard that was in obvious distress. Instead, respondent Sculac opined that the leopard was giving birth. When the leopard was discovered dead an hour later, respondent Sculac elected to leave the leopard's body overnight in the enclosure she had shared with a male leopard. The following morning, the male leopard was discovered lying on top of the female,

vocalizing and in distress, whereupon respondent Sculac administered tranquilizers to the male leopard and affixed a noose around his neck to remove him from atop the dead female leopard. Respondent Sculac injected the male leopard with a reversal drug, and removed the noose. The male leopard entered the shelter, appeared to have trouble breathing, and was bleeding from his nose and mouth. He was discovered dead the following morning. 9 C.F.R. §§ 2.40 (a), (b)(3), 2.131(b)(1).

26. On or about May 18, 2011, at Calhan, Colorado, respondents willfully violated the Regulations (9 C.F.R. § 2.100(a)), by failing to meet the minimum Standards for housing (9 C.F.R. § 3.125(a), affecting over fifty animals, as follows:

- a. Enclosure Housing Pandora, Nefertiti and Tutt: nails protruding outward from top and bottom of elevated resting platform; shredded, splintered wood; ten panels of cyclone fencing structurally unsound, leaning inward and in disrepair.
- b. Enclosure Housing Capricho and India: plywood shelter had shredded and splintered wood nails and holes.
- c. Enclosure Housing Daisy and Seth: elevated platform had broken board, warped and shredded board, and splintered wood.
- d. Enclosure Housing Chip: holes in drywall adjacent to enclosure harboring vermin.
- e. Enclosures (2) Housing Tabu, Zazu and Reno: broken fence wire with sharp edge protruding into enclosure.
- f. Enclosures (2) Housing Sierra and Boo: nails protruding outward from platform to elevated shelters.
- g. Enclosure Housing Willy: shredded, splintering wood in elevated resting platform; nail protruding underneath platform and accessible to Willy.
- h. Enclosure Housing Pharoah: fencing structurally unsound and in disrepair. nails protruding outward from elevated resting platform; broken boards used in platform.

- i. Enclosures (3) Housing KK, Sammy, Amber and Eden: nails protruding outward from elevated platform.
- j. Enclosures (7) Housing Valic, Sumadi, Eragon, Aramis, Sinbad, Pebbles, Tabitha, Gabrielle, Nanda, and Kenya: elevated platforms had shredded, splintered wood.
- k. Enclosure Housing Andy: resting platform had shredded, splintered wood, and was missing a board, exposing nails.
- l. Enclosure Housing Zoe and Zena: front entrance to shelter had broken boards; shredded, splintered wood lying on the ground in front of shelter.
- m. Enclosure Housing Shenandoah, Aphrodite and Harley: fencing structurally unsound, leaning inward and in disrepair; nail and screw protruding outward from elevated platform.
- n. Enclosure Housing Shival, Mugale, Bana Bibi, and Rani: fencing structurally unsound, stretched and in disrepair; metal roof of shelter was broken off and bent upward with jagged edges.
- o. Enclosure Housing Cleatus, Sissy and Charlie: shelter had shredded, splintered wood; nail protruded outward from elevated platform.
- p. Enclosures (2) Housing Tiger, Zara and Nico: shelter roofing missing center pieces.
- q. Enclosure Housing Charaka and Priya: resting platform surface and legs had shredded, splintered wood; nail protruded outward from platform; shelter roof was missing center piece.
- r. Enclosure Housing Trini: shelter roof was missing center piece; roofing material ripped and shredded.
- s. Enclosure Housing Zar and Nico: fencing structurally unsound, stretched and in disrepair.

27. On or about May 18, 2011, at Calhan, Colorado, respondents willfully violated the Regulations (9 C.F.R. § 2.100(a)), by failing to meet the minimum Standards, as follows:

- a. Respondents failed to enclose facilities for animals by an adequate perimeter fence. 9 C.F.R. § 3.127(d).

- b. Respondents failed to establish and maintain an effective pest control program. 9 C.F.R. § 3.131(d).

28. On or about July 2, 2011, at Larkspur, Colorado, respondents failed to handle animals during public exhibition so there was minimal risk of harm to the animals and to the public, with sufficient distance and/or barriers between the animals and the general viewing public so as to assure the safety of animals and the public, in willful violation of section 2.131(c)(1) of the Regulations. 9 C.F.R. § 2.131(c)(1).

29. On or about September 12, 2011, at Calhan, Colorado, respondents willfully violated the Regulations (9 C.F.R. § 2.100(a)), by failing to meet the minimum Standards for housing (9 C.F.R. § 3.125(a)), affecting over fifty animals, as follows:

- a. Enclosure Housing Nefertiti and Tutt: nails protruding outward from top and bottom of elevated resting platform; shredded, splintered wood; eleven panels of cyclone fencing structurally unsound, leaning inward and in disrepair.
- b. Enclosure Housing Capricho and India: plywood shelter had shredded and splintered wood nails and holes.
- c. Enclosures (7) Housing Sinbad, Daisy, Seth, Sumadi, Eragon, Andy, Zazu, Reno, Gabrielle, Tabitha, Pebbles, Elijah, Jezebel: elevated platforms had splintered, chewed wood and protruding nails.
- d. Enclosure Housing Chip: holes in drywall adjacent to enclosure.
- e. Enclosures (6) Housing Anthony, Boo, Poncho, Montana, Carolina, Savanna, Snow Magic, Phoebe, Rocky, Bosco: elevated shelters or platforms had protruding nails.
- f. Enclosure Housing Clyde: hole with sharp edges near front door.
- g. Enclosure Housing Two Alpaca: no cover on electrical box, exposing wiring to animals; sharp ends of nails exposed from roof.
- f. Enclosures (4) Housing Sierra, Boo, Charaka and Priya and Pandora: nails protruding outward from platform to elevated shelters.

- g. Enclosures (4) Housing Shenandoah, Aphrodite, Harley, Toni, Zara, Nico, Trini, Pandora: fencing structurally unsound and in disrepair.
- h. Enclosure Housing Jade: sharp wires protruding from elevated platform.
- i. Enclosure Housing Reyna and Lil Shirkhan: screws protruding outward from elevated platform; wires with sharp edges attached to fence.
- j. Enclosure Housing Nanda: resting platform has splintered wood.
- k. Enclosure Housing Cleatus, Sissy and Charlie: shelter had hole in roof, and shredded, splintered wood; nail protruded outward from elevated platform.
- l. Enclosure Housing Shival, Mugale, Bana Bibi, and Rani: metal roof of shelter was broken off and bent upward with jagged edges.
- m. Enclosures (4) Housing Trini, Charaka, Priya, Tiger, Zara and Nico: shelter roof was missing center piece.
- n. Enclosure Housing Grumpy, Raja, and Shirkhan: resting platform surface and walkway had broken boards, protruding nails, and bent boards.

30. On or about September 12, 2011, at Calhan, Colorado, respondents willfully violated the Regulations (9 C.F.R. § 2.100(a)), by failing to meet the minimum Standards, as follows:

- a. Respondents failed to enclose facilities for animals by an adequate perimeter fence. 9 C.F.R. § 3.127(d).
- b. Respondents failed to ensure that food provided to animals was wholesome and free from contamination. 9 C.F.R. § 3.129(a).
- c. Respondents failed to maintain premises clean and in good repair to protect animals from injury and facilitate husbandry practices. 9 C.F.R. § 3.131(c).
- d. Respondents failed to establish and maintain an effective pest control program. 9 C.F.R. § 3.131(d).

WHEREFORE, it is hereby ordered that for the purpose of determining whether the respondents have in fact willfully violated the Act and the regulations issued under the Act, this

complaint shall be served upon the respondents. The respondents shall file an answer with the Hearing Clerk, United States Department of Agriculture, Washington, D.C. 20250-9200, in accordance with the Rules of Practice governing proceedings under the Act (7 C.F.R. § 1.130 et seq.). Failure to file an answer shall constitute an admission of all the material allegations of this complaint.

The Animal and Plant Health Inspection Service requests that unless the respondents fail to file an answer within the time allowed therefor, or file an answer admitting all the material allegations of this complaint, this proceeding be set for oral hearing in conformity with the Rules of Practice governing proceedings under the Act; and that such order or orders be issued as are authorized by the Act and warranted under the circumstances, including an order that respondents cease and desist from violating the Act and the regulations and standards issued thereunder, assessing civil penalties against the respondents in accordance with section 19 of the Act (7 U.S.C. § 2149) for their violations herein, and suspending or revoking Animal Welfare Act license 84-C-0069.

Done at Washington, D.C.
this 30th day of January 2012

Acting


Administrator
Animal and Plant Health Inspection Service

COLLEEN A. CARROLL
Attorney for Complainant
Office of the General Counsel
United States Department of Agriculture
Washington, D.C. 20250-1400
Telephone (202) 720-6430
e-mail: colleen.carroll@usda.gov